



OHIO STATE BOARD OF PHARMACY

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ORDER OF THE STATE BOARD OF PHARMACY

(Docket No. D-990311-037)

In The Matter Of:

DEAN KEITH GROSS, R.Ph.

864 Dietrich Street

Newark, Ohio 43055

(R.Ph. No. 03-3-11678)

INTRODUCTION

THE MATTER OF DEAN KEITH GROSS CAME TO HEARING ON SEPTEMBER 8, 1999, BEFORE THE FOLLOWING MEMBERS OF THE BOARD: ROBERT B. CAVENDISH, R.Ph. (presiding); ANN D. ABELE, R.Ph.; DIANE C. ADELMAN, R.Ph.; SUZANNE R. EASTMAN, R.Ph.; ROBERT P. GIACALONE, R.Ph.; LAWRENCE J. KOST, R.Ph.; AMONTE B. LITTLEJOHN, R.Ph.; SUZANNE L. NEUBER, R.Ph.; AND NICHOLAS R. REPKE, PUBLIC MEMBER.

DEAN KEITH GROSS WAS REPRESENTED BY DANIEL D. CONNOR, AND THE STATE OF OHIO WAS REPRESENTED BY SALLY ANN STEUK, ASSISTANT ATTORNEY GENERAL.

SUMMARY OF EVIDENCE

(A) Testimony

State's Witnesses:

- (1) William L. Padgett, Ohio State Board of Pharmacy

Respondent's Witnesses:

- (1) Robert Wagonblott, R.Ph., Meijer Stores
- (2) Dean Keith Gross, R.Ph., Respondent
- (3) Goldie B. Ohde, R.Ph.

(B) Exhibits

State's Exhibits:

- (1) Exhibit 1--Copy of three-page Notice of Opportunity for Hearing dated March 11, 1999.

- (2) Exhibit 1A--Continuance Request letter submitted by Daniel D. Connor dated May 18, 1999.
- (3) Exhibit 1B--Hearing Request letter dated March 23, 1999.
- (4) Exhibit 1C--Copy of Hearing Schedule letter dated March 26, 1999.
- (5) Exhibit 1D--Copy of Hearing Schedule letter dated May 26, 1999.
- (6) Exhibit 1E--Copy of Pharmacist File Front Sheet of Dean Keith Gross showing original date of registration as August 4, 1976; and two-page copy of Renewal Application for Pharmacist License No. 03-3-11678 for a license to practice pharmacy in Ohio from September 15, 1998 to September 15, 1999, of Dean Keith Gross dated July 29, 1998.
- (7) Exhibit 2--Doctor Notes of Marla D. Michaels, M.D. on patient Alvina Richardson dated January 22, 1998.
- (8) Exhibit 3--Copy of Meijer #49 "Medical Expenses" report of patient Alvina R. Richardson for January 1, 1996 to January 27, 1998.
- (9) Exhibit 4--Copy of "Meijer Pharmacy Phone Order" for patient Alveena (*sic* Alvina) Richardson for K[C]lonidine 0.5mg, #60 (sixty), 1/2 QID, dated January 22, 1998.
- (10) Exhibit 5--Copy of prescription label numbered 4118068.
- (11) Exhibit 6--Handwritten statement of Penny Mattern dated January 27, 1998.
- (12) Exhibit 7--Copy of Meijer "Pharmacy Discrepancy and Incident Report" and "Supplemental Investigation Report" completed by Michelle Lake dated January 26, 1998.
- (13) Exhibit 8--Dangerous Drug Distributor Inspection Report for Meijer, Inc. #49 dated January 27, 1998.

Respondent's Exhibits:

- (1) Exhibit A--Manila file folder containing the following documents: Two-page Affidavit of Penny E. Mattern dated August 30, 1999; copy of three-page letter from Daniel D. Connor regarding Dean Keith Gross dated August 4, 1999; copy of three-page letter from Daniel D. Connor regarding Penny Ellen Mattern dated August 4, 1999; and copy of three-page letter from Daniel D. Connor regarding Goldie Ohde dated August 4, 1999 with the following attachments: copy of letter from Kerrie A. Foxall, R.Ph. dated July 23, 1999; copy of letter from W. Richard Waddle dated July 20, 1999; and copy of letter from Vira L. Penrod-Wise dated July 29, 1999.

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds the following to be fact:

- (1) Records of the State Board of Pharmacy indicate that Dean Keith Gross was originally licensed in the state of Ohio on August 4, 1976, pursuant to examination, and is currently licensed to practice pharmacy in the state of Ohio. Records further indicate that Dean Keith Gross is the Responsible Pharmacist at Meijer, Inc. #49 pursuant to Sections 4729.27 and 4729.55 of the Ohio

Revised Code and Rule 4729-5-11 of the Ohio Administrative Code. Several errors when dispensing have occurred in this pharmacy in recent years.

- (2) Dean Keith Gross did, on or about January 22, 1998, record a telephone prescription which caused the sale of a misbranded drug, to wit: when presented with information via telephone for Clonidine 0.1mg, Dean Keith Gross wrote the drug name (beginning with the letter "K", partially correcting it, making a "C"). Further, Dean Keith Gross recorded the strength as 0.5mg when the order was for 0.1mg. As Responsible Pharmacist, Dean Keith Gross or a pharmacist under his supervision sold a vial to a 7-year-old patient's mother which contained Clonazepam 0.5mg. The patient took the medication as stated in the directions for use and was severely harmed psychologically, to wit: she attempted to stab her brother with a knife and she attempted to jump out a second-story window. Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.
- (3) Dean Keith Gross as the Responsible Pharmacist did, on or about January of 1998, fail to ensure compliance with prospective drug utilization review and patient counseling regulations, to wit: an incorrect entry in the computer system was not detected by a pharmacist; and, after prescription number 4118068 had been dispensed to a patient and the patient's parent called to ask questions, Dean Keith Gross or a pharmacist under his supervision failed to review the original prescription and/or refill information for over-utilization, incorrect drug, drug dosage and duration of drug treatment, and/or misuse. Further, Dean Keith Gross or a pharmacist under his supervision failed to offer patient counseling. The patient had been prescribed Clonidine 0.1mg but was dispensed Clonazepam 0.5mg. When the patient's mother called to inquire about the wrong drug, Dean Keith Gross or a pharmacist under his supervision simply dismissed the inquiry as "probably a generic," even though he had the knowledge, resources, and capability to correct the error and prevent patient harm. Such conduct is in violation of Rule 4729-5-22 of the Ohio Administrative Code.

CONCLUSIONS OF LAW

- (1) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) Upon consideration of the record as a whole, the State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Sections 3715.52 to 3715.72 of the Revised Code as

provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby admonishes Dean Keith Gross for his actions in this matter.

Further, the Board confirms the importance of appropriate patient counseling and of careful prospective drug utilization review by the use of current patient profiles for every prescription filled.

THIS ORDER WAS APPROVED BY A VOTE OF THE STATE BOARD OF PHARMACY.

MOTION CARRIED.

SO ORDERED.